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IN THE

Supreme Court of the United States

JAMES E. RYAN, ATTORNEY GENERAL OF ILLINOIS,
Petitioner,

v.

TELEMARKETING ASSOCIATES, INC., *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Illinois

BRIEF *AMICI CURIAE* ON BEHALF OF INDEPENDENT SECTOR AND OTHER NONPROFIT ORGANIZATIONS IN SUPPORT OF RESPONDENTS

(List of Other Amici Printed on Inside Front Cover)

ROBERT A. BOISTURE*
ALBERT G. LAUBER
LLOYD H. MAYER
SHARON P. LIGHT
CAPLIN & DRYSDALE, CHARTERED
One Thomas Circle, N.W.
Washington, D.C. 20005
(202) 862-5000

Attorneys for Amici Curiae

**Counsel of Record*

PRESS OF BYRON S. ADAMS ✦ WASHINGTON, D.C. ✦ 1-800-347-8208

Advocacy Institute
Alliance for Children and Families
Alliance of Nonprofit Mailers
American Association of Museums
American Autoimmune Related Diseases Association (AARDA)
American Cancer Society
American Diabetes Association
American Foundation for AIDS Research (amfAR)
American Foundation for the Blind
American Heart Association
American Lung Association
American Society of Association Executives
American Symphony Orchestra League
Americans for the Arts
ANGELCARE
The ASPIRA Association
Association of Fundraising Professionals (AFP)
The Catholic Charities of Santa Clara County
Center on Philanthropy
CIVICUS: World Alliance for Citizen Participation
Clean Water Action, Inc.
Colorado Association of Nonprofit Organizations
Community Anti-Drug Coalitions of America
The Conference Board
Cooperative for Assistance and Relief Everywhere, Inc. (CARE, Inc.)
Council for Advancement and Support of Education (CASE)
Council for Opportunity in Education
Easter Seals, Inc.
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International Youth Foundation
Islamic Society of North America
KaBOOM! Inc.
Kidney Cancer Association
The Learning Center
The Leukemia and Lymphoma Society
Maryland Association of Nonprofit Organizations
National Asian Pacific American Legal Consortium
National Civic League (NCL)
National Committee to Preserve Social Security and Medicare
National FFA Foundation, Inc.
National Health Council
National Marfan Foundation
National Mental Health Association
National Multiple Sclerosis Society
National Puerto Rican Forum
National Urban League
National Wildlife Federation
NOW Legal Defense and Education Fund
Pennsylvania Association of Nonprofit Organizations
Points of Light Foundation
Public Education Network
South Carolina Association of Nonprofit Organizations
Theatre Communications Group
YMCA of the USA

QUESTION PRESENTED

Whether a State may prosecute, consistently with the First Amendment, an action for fraud against a professional fundraiser soliciting contributions on behalf of a charitable organization, where the fundraiser describes the charitable purposes for which the funds are being solicited, but does not disclose to prospective donors the fees and terms of the fundraiser's contract with the charity.

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United Cancer Council, Inc. v. Comm'r, 165 F.3d 1173 (7th Cir. 1999) 16-17, 27

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Telemarketing Sales Rule, 16 C.F.R. § 310.4(b)(1)(iii), (e) 27

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Ill. Admin. Code tit. 14, § 400 *et seq.* (2002), implementing the Solicitation for Charity Act:

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Ill. Admin. Code tit. 14, § 400.65 7
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MISCELLANEOUS:

Sandra Block, *How to Give to Charities Without Receiving Solicitations*, USA Today, November 12, 2002 12

Exempt Organizations Division, Internal Revenue Service, *FY2003 Exempt Organizations (EO) Implementing Guidelines* (September 2002) 14

IRS Announcement 2002-87, 2002-39 I.R.B. 624 13

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Dirk Smillie and William P. Barrett, *Good Works*, Forbes, Dec. 9, 2002 11

Special Report NPT 100 – America's Largest Nonprofits, The NonProfit Times, Nov. 1, 2002 11

Ian Wilhelm, *Charity Under Scrutiny*, The Chronicle of Philanthropy, Nov. 28, 2002 10

Reshma Memon Yaqub, *Not Exactly Top 10*, Worth, Dec. 2002 11

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Reshma Memon Yaqub, *To Give Well, Give Wisely: The Worth 100*, Worth, Dec. 2002 11

Rev. Rul. 75-284, 1975-2 C.B. 204 16

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BRIEF *AMICI CURIAE* ON BEHALF OF INDEPENDENT SECTOR AND OTHER NONPROFIT ORGANIZATIONS IN SUPPORT OF RESPONDENTS

Independent Sector submits this brief *amici curiae* in support of respondents on behalf of itself[1] and fifty-five other nonprofit organizations. The nonprofit organizations joining this brief are listed on the inside front cover, and their charitable purposes are described more fully in an appendix hereto. All parties have provided written consent to the filing of this brief. Letters of consent have been lodged with the Clerk.

INTEREST OF *AMICI CURIAE*

Independent Sector is a coalition of more than 700 national organizations and companies representing the vast diversity of the nonprofit sector and the field of philanthropy. Its members include many of the nation's most prominent nonprofit organizations, leading foundations, and Fortune 500 corporations with philanthropic giving programs. This network represents millions of volunteers, donors, and people served in communities around the world. Independent Sector members work globally and locally in human services, education, religion, the arts, research, youth development, health care, advocacy, the advancement of democracy, and many other areas.

It is part of Independent Sector's mission to ensure that the voices of nonprofit organizations are heard in important cases affecting them. Independent Sector, along with many of the other *amici,* has regularly participated as *amicus* before

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity, other than *amici curiae*, their members or their counsel, made a monetary contribution to the preparation or submission of the brief. S. Ct. Rule 37.6.

this Court in cases of importance to the nonprofit sector, including cases addressing fundraising issues. *E.g., Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564 (1997); *Riley v. National Fed'n of the Blind*, 487 U.S. 781 (1988); *Cornelius v. NAACP Legal Defense and Educ. Fund, Inc.*, 473 U.S. 788 (1985); *Sec'y of State v. Joseph H. Munson Co.*, 467 U.S. 947 (1984); *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983); *Regan v. Taxation with Representation*, 461 U.S. 540 (1983).

The other *amici* are charitable and educational organizations and associations. They rely on the general public for support, and fundraising from the public is therefore essential for their continued existence. At the same time, these organizations strive to educate the public about issues of importance to them, and educational materials are often distributed in conjunction with their fundraising appeals. To aid in their fundraising and public education efforts, many *amici* use professional fundraisers.

Amici have a special interest in preserving the good reputation of the charitable sector and protecting the donating public. For this reason, *amici* for many years have been strong advocates of fair and effective government regulation and of increasing the transparency of charities through greater disclosure of financial and programmatic information and enhanced public access to that information. At the urging of *amici* and others, the states and the federal government have already taken major steps to ensure greater public access to data about charities. The charitable sector itself has also stepped forward to increase access to information about charities and to provide better tools to help donors evaluate this information.

Despite these advances, unscrupulous fundraising practices unfortunately continue to exist. Such practices are

damaging both to the public and to the nonprofit community, and *amici* condemn them. *Amici* are submitting this brief not because they look with favor on the particular contractual arrangements at issue here, but because they share this Court's historic commitment to the First Amendment principle at stake. *Amici* are firmly convinced that increasing public access to information about charities, combined with vigorous enforcement of laws prohibiting fraud in a manner that does not chill the free speech of all charities, represents the best method of protecting both the public and the charitable sector.

SUMMARY OF ARGUMENT

Donors now have an unprecedented ability to judge which charities are worthy of their contributions. Charities and their fundraisers are required by law to make very extensive regulatory filings; there are increasing public and private efforts underway to make such filings and related information about charities readily available to the public, particularly on the Internet; and numerous tools to evaluate charities have been developed. These developments, combined with the ability of the states and the federal government to prosecute fraud based on affirmative misrepresentations and to revoke the charitable status of organizations that violate the law, provide sufficient means to protect the donating public from fraud without chilling charities' speech.

In this case, the Attorney General of Illinois has predicated a fraud prosecution solely on his retroactive judgment that a certain level of fundraising costs is "excessive" and that the nondisclosure of such costs to potential donors at the point of solicitation amounts to "misrepresentation." Allowing the Attorney General's lawsuit to proceed would have a profound chilling effect on protected speech because it would force charities and their fundraisers

to choose between two unacceptable options. Charities would be forced to keep their fundraising costs below whatever level the prosecuting authority in a given jurisdiction deems "excessive," a standard that will rarely be knowable in advance. Alternatively, charities would be forced to engage in "compelled speech"— to disclose their fundraising costs to each prospective donor in a manner that would seriously hamper the effectiveness of their appeals. Neither alternative is acceptable under the First Amendment. *See Riley v. National Fed'n of the Blind*, 487 U.S. 781, 789-90, 799-800 (1988); *Sec'y of State v. Joseph H. Munson Co.*, 467 U.S. 947, 967-68 (1984); *Village of Schaumburg v. Citizens for a Better Envir't*, 444 U.S. 620, 636-37 (1980).

ARGUMENT

I. Increasing Public Access To Information About Charities, Coupled With Vigorous Enforcement Of Laws Prohibiting Affirmative Misrepresentations By Charities And Their Fundraisers, Represents The Most Effective And Least Intrusive Means Of Protecting The Public Against Fraud

In 1991, the Attorney General of Illinois filed this civil suit against respondents, for-profit professional fundraisers soliciting charitable contributions on behalf of an Illinois charity, VietNow National Headquarters ("VietNow"). The Attorney General's complaint did not allege affirmative misrepresentation. Rather, the suit relied on allegations that respondents committed fraud and breached their fiduciary duties by representing to potential donors the charitable purposes for which the donations were sought, without also disclosing the percentage of gross contributions that the fundraisers would be paid pursuant to their contracts with VietNow. According to the Attorney General, disclosure of fundraising fees in these circumstances is essential because

prospective donors allegedly "have significantly less access to such information." Pet. Br. 11, 36.

This Court made clear fifteen years ago, before the advent of the information age, that "fraud" may not be predicated on nondisclosure of fundraising fees. *See Riley*, 487 U.S. 781 (1988). Today, predicating fraud solely on nondisclosure of such fees is even less appropriate, because donors have the benefit of unprecedented access to information about charities. Through a combination of required disclosures to the government, public and private efforts to make such information widely available, and the proliferation of tools for evaluating charities, donors are better equipped than they ever have been to evaluate the worthiness of charities. These continuing efforts, strongly supported by *amici*, are already providing greater accountability and transparency for the charitable sector. Combined with the existing ability of the states and the federal government to prosecute fraud based on actual misrepresentations by fundraisers, these efforts represent the best and least intrusive way of protecting the public from questionable fundraising practices. The Illinois Attorney General's approach, by contrast, would compel speech and thus violate well-established First Amendment rights.

A. The States And The Federal Government Require Extensive Disclosure By Charities Of Their Activities And Finances

The legally required disclosures by charities are extensive. The IRS requires charities to file annually a six-page Form 990 (Return of Organization Exempt from Income Tax), a six-page "Schedule A" to Form 990 specifically

designed for charities, and a list of major donors.[2] As part of the Form 990, charities are required to provide detailed information about their fundraising costs. *See* Form 990, Part II (requiring a breakdown of fundraising costs and information about "joint costs" for combined educational and fundraising campaigns).[3]

Almost all of the states and many localities require charities and their professional fundraisers to register and file regular reports on their activities and finances, particularly their fundraising costs.[4] These jurisdictions generally require

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[2] A charity with annual gross receipts of less than $100,000 and end-of-year assets of less than $250,000 is permitted to file the two-page Form 990-EZ in place of the Form 990, but it is still required to file the six-page Schedule A and the list of major donors. *See* Instructions for Form 990 and Form 990-EZ (2001), at 1-2. Only charities with annual gross receipts that are normally $25,000 or less, and certain specific types of charities, primarily churches and church-related entities, are exempt from having to file either Form 990 or Form 990-EZ. *Id.* at 2.

[3] Charities are also required to make a one-time filing of Form 1023 (Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code) with the IRS to receive recognition of their tax-exempt charitable status. Only charities with annual gross receipts that are normally less than $5,000, churches and church-related entities are exempt from this requirement. *See* Instructions for Form 1023, at 1. This form also asks for information about fundraising activities. Form 1023, Part II, Question 3. The IRS has recently proposed modifying Form 1023 to require more information about fundraising activities, particularly if those activities involve professional fundraisers. *See* proposed Form 1023, Part VIII, Questions 3a, 3b, *available at* http://www.irs.gov/pub/irs-tege/draft_f1023.pdf (last visited January 17, 2003).

[4] Forty states and the District of Columbia require charities to register and file regular reports, although most states exempt certain categories of charities, such as churches, from this requirement. Forty-four states and the District of Columbia require professional fundraisers to register and file regular reports, again with some exemptions for professional fundraisers hired by certain categories of charities. *Survey of State Laws Regulating Charitable Solicitations*, The Philanthropy Monthly (2002).

charities to report information above and beyond the information provided to the IRS on Form 990, as well as requiring professional fundraisers to provide extensive information.

For example, in Illinois each charity that solicits contributions from persons in the state is required to file annually with the Attorney General a copy of its IRS Form 990, an Illinois Charitable Organization Annual Report (Form AG990-IL), an Individual Fundraising Campaign report (Form IFC) for each fundraising campaign in which the charity used a paid professional fundraiser, and audited financial statements if either the charity's gross contributions for the year exceeded $150,000 or it used a paid professional fundraiser that raised contributions in excess of $25,000. Ill. Admin. Code tit. 14, § 400.60 (2002); *see also* http://www.ag.state.il.us/charitable/require.htm (last visited January 17, 2003) (listing filing requirements).[5] Professional fundraisers are required to file every six months a financial report (Form PFR-02), a compensation report (Form PFR-04), an explanation of fundraising fees (Form PFR-05), and a Form IFC for each fundraising campaign conducted. Ill. Admin. Code tit. 14, § 400.65 (2002). They are also required to file annually a registration statement (Form PFR-01), a list of charities and contracts (Form PFR-06), a copy of each fundraising contract, and a bond. *Id.* § 400.70. The Illinois Attorney General in fact appears to have based his complaint in this case primarily on information contained in filings that respondents themselves made. *See* J.A. 21-35 (1984 and 1988 contracts between Telemarketing Associates and

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[5] Charities with annual contributions of $25,000 or less are subject to less onerous filing requirements, and religious charities can receive an exemption from these filing requirements. Ill. Admin. Code tit. 14, §§ 400.40(a), 400.60(e)(3) (2002).

VietNow), 41-82 (financial reports filed by Telemarketing Associates, Inc.), 90-100 (1992 contract between respondent Telemarketing Associates and VietNow).

Failure to file the required reports can lead to severe penalties. The IRS late-filing penalties accumulate at a rate of $20 per day, increased to $100 per day for charities with more than $1 million in annual gross receipts. 26 U.S.C. § 6652(c)(1)(A). The states can impose fines, require professional fundraisers to forfeit any compensation they have received, seek injunctive relief to prevent a charity or fundraiser that has not registered or filed the required reports from soliciting in the state, and even file criminal charges. *See, e.g.*, 225 Ill. Comp. Stat. 460/2(i) (civil penalties; injunctive relief), 460/6(g) & (h) (criminal penalties; forfeiture of compensation), 460/7(g) & (h) (late penalties; injunctive relief; forfeiture of compensation), 460/9(g) (punitive damages; injunctive relief), 460/9(h) (forfeiture of compensation) (West 1998).

B. Information Collected About Charities Is Readily Available To The Public

The information described above has been made available to the public both by governments and by private enterprises. All of the information reported to the IRS, except for the names, addresses and other identifying information for major donors, is available to the public from the IRS on request. 26 U.S.C. § 6104(a)(1), (b); 26 C.F.R. § 301.6104(b)-1. All charities are also required by law to provide copies of their Form 990 and schedules, except for information about major donors, to any person who requests a copy. 26 U.S.C. § 6104(d).[6]

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[6] Charities are also required to provide copies of Form 1023 to the public upon request. 26 U.S.C. § 6104(d)(1)(A)(ii). For more information about Form 1023, see *supra* note 3.

Philanthropic Research Inc. (PRI), itself a charity, has taken further steps to ensure that information about charities is readily available to the public. Funded by contributions from charitable private foundations and others interested in increasing the transparency of the charitable sector, and working with the IRS, PRI makes all Form 990s filed by charities available to the public at no charge through its web site, http://www.guidestar.org (last visited January 17, 2003). Searchable by name, key words, type of charity, income range, and location, the PRI database provides easy access to extensive information about every charity that files the Form 990.

Information filed with states is generally available on request from the appropriate agency, usually either the Attorney General or the Secretary of State. In Illinois, for example, any reports and documents filed with the Attorney General are open to public inspection. 225 Ill. Comp. Stat. 460/2(f) (West 1998). The Illinois Attorney General's office also provides for a nominal fee copies of reports it receives. *See* http://www.ag.state.il.us/charitable/aboutcharitydb.htm (last visited January 17, 2003) (stating that copies of reports are available for fifteen cents per page).

Many states have placed on the Internet, or are in the process of doing so, the reports they receive from charities and professional fundraisers. As noted by the Illinois Attorney General, a copy of VietNow's 2000 IRS Form 990 is available on the California Attorney General's web site, along with VietNow's audited financial statement for the same year. *See* Pet. 2 n.1. VietNow's Form 990 and audited financial statement clearly show the portion of contributions received that it spent on fundraising costs. *See* 2000 VietNow Form 990, Part I, line 15 & Part II, column (D); VietNow June 30, 2001 Financial Statement 3, 7. The Illinois Attorney

General is in the process of establishing an Internet-accessible database to provide the public with access to the reports it receives. *See* http://www.ag.state.il.us/charitable/charity.html (last visited January 17, 2003).

C. Potential Donors Have Numerous Tools, Provided By A Growing Number Of Sources, By Which They Can Evaluate Charities

The ready availability of information about charities has led to a proliferation of organizations rating and analyzing charities. The American Institute of Philanthropy publishes its ratings of more than 400 major charities, including VietNow, in its *Charity Rating Guide & Watchdog Report*, which is available by mail for $3.00; it also lists the top-rated charities at http://www.charitywatch.org (last visited January 17, 2003). Other organizations that evaluate charities include: the Better Business Bureau Wise Giving Alliance, which makes reports available at http://www.give.org (last visited January 17, 2003) on hundreds of charities, including VietNow, that solicit nationally or have national or international programs; Charity Navigator, which rates more than 1,700 charities at http://www.charitynavigator.org (last visited January 17, 2003); and Ministry Watch, which rates 485 large Christian charities at http://www.ministrywatch.org (last visited January 17, 2003). *See* Ian Wilhelm, *Charity Under Scrutiny*, The Chronicle of Philanthropy, Nov. 28, 2002, at 22 (reporting on the growth of charity watchdog services). In addition, state and local organizations, such as the Charities Review Council of Minnesota, also evaluate charities. *See, e.g.*, http://www.crcmn.org (last visited January 17, 2003).

Numerous membership organizations promulgate fundraising and other standards for specific types of charities. For example, the National Health Council promulgates

standards for voluntary health agencies, the Council on Accreditation for human services charities, the Land Trust Alliance for land trust charities, and the Evangelical Council for Financial Accountability for religious charities. To become members of these organizations, and receive the right to represent themselves to donors as members of these organizations, charities must satisfy their ethical standards.

Ratings of charities are also published on a regular basis by the media. For example, each December *Worth* magazine reports on the 100 best charities and a number of less-deserving charities. Reshma Memon Yaqub, *To Give Well, Give Wisely: The Worth 100*, Worth, Dec. 2002, at 80; Reshma Memon Yaqub, *Not Exactly Top 10*, Worth, Dec. 2002, at 95. Similarly, *Forbes* magazine reports annually on the largest charities, focusing in particular on their financial efficiency. *Good Works*, Forbes, Dec. 9, 2002, at 186 (annual survey of 200 major charities). *Smart Money* also annually ranks the nation's 100 largest charities by the percentage of budget dedicated to programs and the percentage spent on fundraising. *Make Your Donations Count*, Smart Money, Nov. 12, 2002, at 70. In addition, *The NonProfit Times* has been ranking charities for fourteen years, providing information on income and expenses drawn from IRS Form 990s. *Special Report NPT 100 – America's Largest Nonprofits*, The NonProfit Times, Nov. 1, 2002, at 30.

Many organizations also offer models and guides for evaluating charities. In addition to the organizations mentioned above that rate charities, organizations providing model standards include *amicus* Association of Fundraising Professionals (AFP) and *amicus* Independent Sector. For example, AFP distributes a Code of Ethics and a Donor Bill of Rights, and Independent Sector provides a compendium of standards and codes for nonprofit organizations at

http://www.independentsector.org/issues/accountability/standards.html (last visited January 17, 2003). All of these organizations have educational campaigns designed to increase public awareness of the available resources for learning more about charities. It is also common for the media to provide guidelines to help potential donors evaluate charities. *See, e.g.*, Sandra Block, *How to Give to Charities Without Receiving Solicitations*, USA Today, November 12, 2002, at B3 (offering suggestions on how to research a charity).

Government agencies also provide materials to help donors learn about and evaluate charities. For example, the Federal Trade Commission publishes a guide on telemarketing and charitable donations (*Charitable Donation$: Give or Take*), available at http://www.ftc.gov/bcp/conline/pubs/tmarkg/charity.htm (last visited January 17, 2003). Many state Attorneys General provide similar guides. For example, the California Attorney General publishes *Guide to Charitable Solicitation*, available at http://caag.state.ca.us/charities/publications/99char1.pdf (last visited January 17, 2003); the Illinois Attorney General publishes *Tips for Informed Charitable Giving*, available at http://www.ag.state.il.us/charitable/charitygive.htm (last visited January 17, 2003); and the New York Attorney General publishes *Tips on Charitable Giving*, available at http://www.oag.state.ny.us/charities/chargive.pdf (last visited January 17, 2003).

D. Steps Are Underway To Provide Even Greater Access To Information About Charities

The IRS and state charity regulators are working in collaboration with charities to enhance further the reporting of fundraising costs. For example, the IRS is considering expanding the amount of information that charities are required to report about fundraising costs on their Form 990s. *See* IRS Announcement 2002-87, 2002-39 I.R.B. 624 (noting recent changes to Form 990 to increase the accuracy of reported fundraising costs and seeking comments on other means to improve such reporting). *Amicus* Independent Sector plans to submit comments to the IRS in late January, 2003 in support of these efforts.

The accounting profession, working with the charitable sector, is also taking steps to improve the reporting of fundraising costs by charities. For example, in 1998 the American Institute of Certified Public Accountants issued a Statement of Position to govern how charities allocate costs for joint activities, such as mailings that have both a public education and a fundraising component. Known as "SOP 98-2" and entitled "Accounting for Costs of Materials and Activities of Not-for-Profit Organizations and State and Local Government Entities that Include Fundraising," this Statement is helping to standardize how fundraising costs are calculated and reported.

The IRS and a number of states, with strong support from the charitable sector, are also creating systems for electronic filing and even greater public dissemination of Form 990s and other charity filings. For example, twelve state charity offices are working with the Urban Institute's National Center for Charitable Statistics on a system for the electronic filing of Form 990 and state registration forms. Two of these

states, Pennsylvania and Colorado, already accept electronically-filed Form 990s and state charity forms. *See* http://nccs.urban.org (last visited January 17, 2003) (reporting on the status of this e-filing initiative). The Exempt Organizations Division of the IRS is working on an electronic filing process for the Form 990 at the federal level. *See* Exempt Organizations Division, Internal Revenue Service, *FY2003 Exempt Organizations (EO) Implementing Guidelines* (September 2002), at 4, 14-15 (listing electronic filing as one of the agency's "Key Strategic Initiatives").

Electronic filing is an important step in increasing public access to information about charities because it will shorten the time between the filing of returns and their public release. Electronically filed information is also much easier to process and to check for completeness and accuracy. The IRS and state regulators will therefore need to spend fewer resources on data processing and so will have more resources for audits and enforcement efforts.

In March 2002, leaders in the nonprofit community, including *amicus* Independent Sector, launched the Electronic Data Initiative for Nonprofits (EDIN), which seeks to promote an integrated federal and state effort to streamline the reporting and dissemination of data on nonprofit organizations through the appropriate use of electronic technology. The goal is to create a comprehensive, secure, integrated, and publicly accessible database about the operations of nonprofit organizations and to reduce the barriers to electronic filing of Form 990s. The coalition will educate nonprofit organizations about the benefits of electronic filing, collect feedback from charities and foundations, and share this information with the IRS and with Congress. The coalition will also attempt to secure support from tax preparation software vendors and the accounting and legal professions to help ensure successful and

rapid transition to electronic filing. As increasing numbers of nonprofit organizations transmit their data to the IRS and the states in electronic format, more accurate, timelier information about them will be available to potential donors.

Amicus Independent Sector has also launched a multi-tiered accountability initiative to help the boards and staffs of charities and other nonprofits develop clear standards and procedures for ethical behavior. The priority objectives of this initiative include enhancing accountability to the public and increasing openness about charitable activities and finances. Along with the other public and private efforts already mentioned, this initiative represents a highly effective way of ensuring that potential donors are fully informed about the activities and finances of charities.

E. The Government Retains The Ability To Prosecute Fraud Based On Affirmative Misrepresentations And To Revoke The Charitable Status Of Organizations That Violate The Law

The First Amendment does not prevent the states or the federal government from pursuing fraud claims against charities and their fundraisers based on affirmative misrepresentations to potential donors. In this respect, we agree with the Solicitor General that, if the Illinois Attorney General's amended complaint alleged that respondents intentionally made affirmative misrepresentations to potential donors about how much was to be paid to VietNow, such as telling donors that "90% or more goes to the vets" when this was not the case, then the amended complaint would state a cause of action for fraud that is permissible under the First Amendment. *See* U.S. Gov't Br. 4. The Supreme Court of Illinois appears to have foreclosed such a reading of the complaint, however, with its conclusion that, absent a

constitutionally impermissible attempt to impose a percentage-based limitation on fundraising costs, the complaint fails to state a cause of action under Illinois law for fraud or breach of fiduciary duty. Pet. App. 17; *see also id.* at 2 ("there is no allegation that [respondents] made affirmative misstatements to potential donors").

If a charity were found to have engaged in fraud based on such affirmative misrepresentations, or to have routinely failed to meet its legal obligations to make required filings with the IRS or state regulators, it could be subject to the loss of its tax-exempt status under both federal and state law. The IRS has ruled that a charitable organization may not engage in substantial unlawful activities because the conduct of an unlawful activity is inconsistent with charitable purposes. *E.g.*, Rev. Rul. 97-21, 1997-1 C.B. 121 (ruling that a charitable hospital convicted of violating the Medicare and Medicaid anti-kickback statute does not qualify as a tax-exempt charity); Rev. Rul. 75-284, 1975-2 C.B. 204 (ruling that an antiwar protest organization that urges demonstrators to commit violations of local ordinances and breaches of public order does not qualify as a tax-exempt charity). Illinois law provides that if an Illinois nonprofit corporation has solicited money and failed to use the money for the purpose for which it was solicited, or has fraudulently solicited money or fraudulently used the money solicited, the Circuit Court may, in an action by the Attorney General establishing these facts, dissolve that corporation. 805 Ill. Comp. Stat. 105/112.50(a)(4) (West 1993).

In certain circumstances, improper relationships between a charity and a professional fundraiser may also be cause for revocation of the charity's tax exemption. For example, in *United Cancer Council, Inc. v. Comm'r*, 165 F.3d 1173, 1179-80 (7th Cir. 1999), the Court of Appeals, while

rejecting IRS allegations of private inurement on the facts presented, recognized that if a charity were found to be operated to a significant degree for the private benefit of a fundraiser, the IRS could revoke the charity's tax-exempt status. Loss of federal tax-exempt charitable status would generally also result in loss of such status under state law. *E.g.*, 35 Ill. Comp. Stat. 5/205 (West 1996) (conditioning state tax exemption on federal tax exemption). If a fundraiser exercises substantial influence over a charity, the IRS can also impose financial penalties known as "intermediate sanctions" on the fundraiser and force it to repay any "excess benefits" it has improperly enjoyed at the charity's expense. *See* 26 U.S.C. § 4958 (imposing financial penalties on persons with substantial influence over a charity who engage in "excess benefit transactions" as defined by statute); 26 C.F.R. § 53.4958-3(e)(2) (providing that improper influence over a charity does not require formal or decisionmaking control, but includes practical dominance of a charity's affairs).

State and federal regulators thus have a large and growing arsenal of weapons that they may use to combat fraud by charities or their fundraisers. *Amici* strongly support the vigorous enforcement of these laws in ways that do not chill legitimate charitable speech.

II. It Is Inconsistent With The First Amendment To Predicate A Fraud Complaint Solely On Nondisclosure Of An Allegedly "Excessive" Fee Arrangement Between A Fundraiser And A Charity

Beginning in the long line of cases cited in *Village of Schaumburg v. Citizens for a Better Envir't*, 444 U.S. 620, 628-32 (1980), and continuing through *Sec'y of State v. Joseph H. Munson Co.*, 467 U.S. 947, 961-62 (1984), and *Riley v. National Fed'n of the Blind*, 487 U.S. 781, 789

(1988), into the more recent cases of *United States v. Kokinda*, 497 U.S. 720, 725 (1990), and *Internat'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 677-78 (1992), this Court has repeatedly reaffirmed that charitable solicitation speech is entitled to the highest degree of First Amendment protection because it is necessarily linked with informative and persuasive speech. As the Supreme Court of Illinois noted, this conclusion is particularly apposite here because "the fundraising services [respondents] provided * * * were inextricably intertwined with the advancement of VietNow's philosophy and purpose." Pet. App. 15. Government action infringing on such speech must therefore be narrowly tailored to serve a substantial governmental interest. *Riley*, 487 U.S. at 789; *Schaumburg*, 444 U.S. at 637.

Since speech requires a means to speak, this protection extends not only to speech in which charities engage directly, but also to speech of others who act on their behalf. *See, e.g., Meyer v. Grant*, 486 U.S. 414, 422-23 (1988) (holding that prohibiting proponents of a ballot initiative from hiring paid petition circulators to obtain the required signatures to place such an initiative on the ballot violates the First Amendment in part because it limits the number of voices that will convey the speaker's message). When a charity retains a professional fundraiser, therefore, First Amendment protection extends to solicitations that the fundraiser makes on behalf of the charity. *Riley*, 487 U.S. at 789; *Munson*, 467 U.S. at 960-61 & 967 n.16; *Schaumburg*, 444 U.S. at 635-36. Restrictions on how much a charity can pay a professional fundraiser, whether enacted by statute or imposed by individual fraud prosecutions, necessarily limit the ability of charities to speak, particularly charities that support unpopular causes or include significant educational or advocacy messages with their fundraising appeals. *Riley*, 487 U.S. at

794; *Munson*, 467 U.S. at 967; *Schaumburg*, 444 U.S. at 636-37.

Fundraising costs, whether incurred by a charity internally or paid to a professional fundraiser, vary widely depending on many factors, including factors outside the charity's control. *Riley*, 487 U.S. at 791-92; *Munson*, 467 U.S. at 961-62, 967; *Schaumburg*, 444 U.S. at 636-37 n.10. Charities seeking to raise funds for unpopular or novel causes almost inevitably incur high fundraising costs. Charities often use telemarketing communications, not only to raise funds, but also to acquaint the public with their charitable mission and to encourage citizen action. "Prospecting" solicitations, directed toward individuals with no prior giving history, are extremely expensive and time-consuming, and in the short run they usually generate an out-of-pocket loss. Therefore, basing fraud prosecutions solely on the existence of allegedly "high" fundraising costs, or requiring mandatory disclosure of such costs, threatens to chill the speech of the very charities that are in the greatest need of protection so that they may make their voices heard.

The government indisputably has a substantial interest in preventing fraud. This Court has repeatedly recognized, however, that the level of a charity's fundraising costs has little if any correlation with fraud. *Riley*, 487 U.S. at 793 & n.7; *Munson*, 467 U.S. at 966-67 & n.15; *Schaumburg*, 444 U.S. at 636-37. This Court has therefore struck down, as not narrowly tailored to serve this interest, statutes that conditioned a charity's right to speak on maintaining fundraising costs below a specified level. *Riley*, 487 U.S. at 798; *Munson*, 467 U.S. at 967-68; *Schaumburg*, 444 U.S. at 636-37.

There are many reasons why a charity could legitimately incur very substantial fundraising costs, either in a given fundraising campaign or over time. As noted in *Riley*:

> [T]here are several legitimate reasons why a charity might reject the State's overarching measure of a fundraising drive's legitimacy — the percentage of gross receipts remitted to the charity. For example, a charity might choose a particular type of fundraising drive, or a particular solicitor, expecting to receive a large sum as measured by total dollars rather than the percentage of dollars remitted. Or, a solicitation may be designed to sacrifice short-term gains in order to achieve long-term, collateral, or noncash benefits. To illustrate, a charity may choose to engage in the advocacy or dissemination of information during a solicitation, or may seek the introduction of the charity's officers to the philanthropic community during a special event (e.g., an awards dinner).

487 U.S. at 791-92. In *Munson*, Maryland officials had actually determined that the fundraising costs of thirteen charities (out of sixteen applicants) were reasonable even though they exceeded the statutory limit of 25%, including five charities with fundraising percentages of 80% to 85%. *Munson*, 467 U.S. at 967 n.15.

Better and less intrusive methods of combating fraud exist. The government may prohibit false statements and affirmative misrepresentations by solicitors; require truthful answers to questions about fundraising expenses; require extensive financial disclosures by charities and fundraisers; make this information readily accessible to the public in forms that permit efficient evaluation of individual charities; and prosecute charities and fundraisers that violate these

requirements. The federal government and the states also have the ability to investigate whether an organization with high fundraising costs is in fact a charity under the applicable laws, and to revoke the tax-exempt charitable status of an organization that engages in fraud or routinely fails to make its legally required filings.

This Court has specifically recognized that requiring charities to disclose their financial information to the government and then making that information available to the public is an available and constitutional means for addressing the fundraising concerns raised by the states. *Riley*, 487 U.S. at 795, 800; *Munson*, 467 U.S. at 967-68 n.16; *Schaumburg*, 444 U.S. at 637-68. As noted earlier, the amount of financial information collected about charities and the public's access to that information have increased dramatically since this Court's decision in *Riley*. These are exactly the methods for combating questionable fundraising practices that this Court has recognized as being consistent with the First Amendment.

III. The Illinois Attorney General's Fraud Suit Would Violate the First Amendment Because It Would Force Charities And Their Fundraisers Either To Keep Their Fundraising Costs Below Whatever Level The Attorney General Deems "Excessive" Or To Speak The Words Compelled By The Attorney General

This Court has flatly rejected any attempt by states to require charities to demonstrate that their fundraising expenses are "reasonable" in amount. *Riley*, 487 U.S. at 793 (rejecting as unconstitutional any requirement that a speaker prove "reasonableness" of fundraising fees "case by case based upon what is at best a loose inference that the fee might be too high"); *Munson*, 467 U.S. at 966 ("The flaw in the statute is not simply that it includes within its sweep some

impermissible applications, but that in *all* its applications it operates on a fundamentally mistaken premise that high solicitation costs are an accurate measure of fraud.") (emphasis added). Such a requirement necessarily chills speech because "in every such case the fundraiser must bear the costs of litigation and the risk of a mistaken adverse finding by the factfinder, even if the fundraiser and the charity believe that the fee was in fact fair." *Riley*, 487 U.S. at 794; *see also New York Times Co. v. Sullivan*, 376 U.S. 254, 279 (1964) (noting that even if the facts exist to sustain the defense of truth for a speaker facing a libel suit by a public official, allowing such a suit to proceed absent actual malice on the part of the speaker impermissibly infringes on speech "because of doubt whether [the defense of truth] can be proved in court or fear of the expense of having to do so").

This Court has also rejected as unconstitutional any attempt by states to compel charities or their professional fundraisers to disclose their fundraising costs to potential donors, absent a question from those individuals about such costs. *Riley*, 487 U.S. at 795-801; *see also Hurley v. Irish-American Gay, Lesbian and Bisexual Group*, 515 U.S. 557, 573 (1995) (stating that outside of the commercial advertising context, the First Amendment gives speakers the right to tailor their speech, including the right to omit "statements of fact the speaker would rather avoid"). Yet that is exactly what the Illinois Attorney General is attempting to do in this case by making respondents' nondisclosure of their fee arrangement the basis for his claims of fraud and of other violations of state law. J.A. 10, 85-88.

Contrary to the Solicitor General's suggestion (U.S. Gov't Br. 9), the theory of the instant fraud complaint would inescapably impose on fundraisers an affirmative duty to disclose fundraising fees regarded by the government as

"excessive." The Solicitor General correctly recognizes that imposition of an absolute duty to disclose fundraising fees, whether by statutory prescription or by a common-law fraud action predicated on nondisclosure of such fees, would contradict this Court's holding in *Riley*. The Solicitor General accordingly argues that a duty to disclose is not absolute under the Illinois Attorney General's theory, but would arise only where disclosure of fundraising fees is necessary to ensure that other representations made by the fundraiser are not misleading. *See* U.S. Gov't Br. 9, 24-25.

In the eyes of an aggressive attorney general, however, virtually any statement that a fundraiser would make in a real-world solicitation could be said to be "potentially misleading" if not accompanied by disclosure of his fees. For example, the mere statement that funds received "would go to Charity X," or that "Charity X would benefit from the contribution," could be said to be misleading unless the fundraiser also explained that the fees it received would diminish the charity's net receipts. Indeed, the allegedly "misleading" statement by the fundraiser here was a straightforward recitation of VietNow's charitable purposes; it is hard to imagine any fundraising solicitation that would not identify the charity's tax-exempt mission. Thus, if this Court allows the Attorney General's complaint to proceed, the only practical way for a charity or its professional fundraiser to be assured that the agreed-upon payments to the fundraiser will not expose the fundraiser to a claim of fraud would be for the fundraiser to disclose his fees. This Court has recognized that being forced to make such disclosures would seriously hamper the legitimate efforts of fundraisers to raise money for the charities they represent, in violation of the First Amendment. *Riley*, 487 U.S. at 799-800.

Illinois here has attempted to impose a fee-disclosure requirement on fundraisers, not by statute as in *Riley*, but through the *in terrorem* effects of an individualized fraud complaint. But all of the reasons for rejecting such attempts when made through statutes or regulations apply with equal force to attempts made through individual prosecutions. This is particularly true here, because the Attorney General is not only seeking various monetary penalties if fraud is shown but also seeking to enjoin respondents from speaking in the State of Illinois in the future. J.A. 12-13, 88. The Attorney General is therefore attempting to impose a prior restraint of speech on respondents that for respondents is as broad and debilitating as any statute or regulation. As this Court noted in *Munson*, it makes little difference whether a charity or professional fundraiser is subject to a pre-donation regulation or to a post-donation prosecution based on fundraising costs, since the adverse effect on protected speech is the same. *Munson*, 467 U.S. at 969.

The governmental action here is actually more flawed constitutionally than the statutes invalidated in *Schaumburg*, *Munson*, and *Riley*, because those statutes at least provided clear guidance regarding what level of fundraising costs would be permitted. Respondents here face prosecution based solely on the Illinois Attorney General's after-the-fact judgments that the level of their fundraising costs is "excessive" and, therefore, that nondisclosure of such costs converts into a "misrepresentation" an otherwise accurate description of VietNow's charitable purposes. But a charity would have no way of knowing, in advance, what types of fundraising arrangements prosecutors would later regard as "excessive," or even what factors would enter into such a determination. Nor could a charity predict in advance how prosecutors would later parse particular statements made during the fundraising solicitation, which might be deemed

"misleading," or not, depending on subtle variations in language. Thus, if the Attorney General's complaint were allowed to proceed, any prosecutor would have it in his discretion to pursue claims of fraud against whatever charities he chose, based on highly subjective, after-the-fact determinations.

For example, the Attorney General of Maryland, under this approach, could seek to impose the same 25% limit on fundraising costs rejected in *Munson* by bringing or threatening to bring fraud claims against any charity that paid a professional fundraiser more than that amount, unless the fundraiser disclosed the fee arrangement to potential donors. Such discretionary power would create "a threat of censorship that by its very existence chills free speech." *Munson*, 467 U.S. at 964 n.12. This threat is particularly acute for charities that engage in advocacy or support unpopular causes — charities that are likely to have high fundraising costs and, concurrently, to engage in speech that governmental officials may be especially desirous of silencing. *See Riley*, 487 U.S. at 794 (expressing concern that uncertainty about what fundraising costs are in fact "reasonable" would discourage professional fundraisers from engaging in "solicitations combined with the advocacy and dissemination of information" or fundraising for "primarily small or unpopular" charities); *Munson*, 467 U.S. at 967 ("It is equally likely that the statute [based on fundraising costs] will restrict First Amendment activity that results in high costs but is itself a part of the charity's goal or that is simply attributable to the fact that the charity's cause proves to be unpopular.").

Charities and their fundraisers would also face a proliferation of varying standards regarding what level of fundraising costs are "excessive," how the determination of

"excessive costs" is made, what other statements by a fundraiser might thereby be rendered "misleading," and what evidence is required to counter such allegations. The proliferation of diverse and vague standards, combined with substantial prosecutorial discretion, would have a strong chilling effect on the speech of charities that solicit contributions in more than one jurisdiction. This chilling effect would be compounded by the prospect of rulings on such claims being issued by juries in multiple jurisdictions, potentially accompanied by large and unpredictable compensatory and punitive damage verdicts, and imposing high litigation costs even on charities and fundraisers that successfully defend themselves. The inevitable consequence would be a *de facto* requirement that charities disclose their fundraising expenses, which would enable the government to impose indirectly the very obligation that this Court, in *Riley*, held that the government may not impose directly.

The federal government and the states have an array of constitutionally permissible options for addressing their legitimate interests in combating fraud and in ensuring that organizations making charitable fundraising appeals are legitimate charities and not fronts for for-profit entities. The government's ability to require extensive disclosure of financial information by charities and their fundraisers and to make that information readily available to the public is one such option.[7] The government can also require fundraisers to answer truthfully questions posed by prospective donors about fundraising costs, as Illinois in fact does. *See Riley*, 487 U.S. at 799 (noting that an unchallenged portion of the North

[7] The Illinois Attorney General was in fact allowed to proceed with his claim that respondent Armet, Inc. had failed to comply with the Illinois registration requirements for professional fundraisers, but chose to dismiss that claim in order to appeal immediately the dismissal of the rest of his claims. Pet. App. 22.

Carolina statute at issue required disclosure to donors of a fundraiser's professional status, and another statute required fundraisers to disclose upon request how much of the contributions would be turned over to the charity); 225 Ill. Comp. Stat. 460/17(b) (West 1998) (requiring a professional fundraiser that receives a certain percentage of the gross amount of each contribution to disclose that percentage amount if the potential donor asks for this information). The federal government requires professional fundraisers that raise funds through telephone calls to promptly identify the charity on behalf of which they are calling, to state they are calling to solicit a contribution, and to agree to remove a person's name from their calling list on request. 16 C.F.R. § 310.4(b)(1)(iii), (e). Illinois law has a similar requirement that paid professional fundraisers promptly identify themselves as such, and inform the potential donor that contracts and reports regarding the charity are on file with the Attorney General. 225 Ill. Comp. Stat. 460/17(a) (West 1998).

As noted above, the states and the federal government also have the ability to pursue fraud prosecutions based on false statements and affirmative misrepresentations, and to revoke the tax-exempt status of charities that engage in fraud or violate laws governing charitable solicitations. *Amici* strongly support vigorous enforcement of these laws. Furthermore, if the states or the federal government are concerned that an organization is not a legitimate charity because it is providing an improper benefit to its professional fundraisers, the best way to address that concern is not to rely on the vague standard of materiality found in a common-law fraud claim, but to seek instead to revoke the tax-exempt charitable status of the offending organization itself. *See United Cancer Council, Inc. v. Comm'r*, 165 F.3d 1173, 1179-80 (7th Cir. 1999).

In short, the government has more than sufficient methods for addressing questionable fundraising practices, and those methods are becoming more and more effective every day. The explosive growth of information about charities available through the Internet and from government agencies in particular has increased the transparency of the charitable sector and provided the public with enormous amounts of information to guide their giving decisions. There is therefore no need or constitutional justification for allowing the Illinois Attorney General's claim of fraud based on the level and nondisclosure of fundraising costs to proceed, with all of the negative ramifications on the speech of charities and their professional fundraisers that would ensue.

CONCLUSION

The judgment of the Supreme Court of Illinois should be affirmed.

Respectfully submitted,

ROBERT A. BOISTURE*
ALBERT G. LAUBER
LLOYD H. MAYER
SHARON P. LIGHT
CAPLIN & DRYSDALE, CHARTERED
One Thomas Circle, N.W.
Washington, D.C. 20005
(202) 862-5000

Attorneys for Amici Curiae

**Counsel of Record*

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APPENDIX

Charitable Purposes Of Amici Other Than Independent Sector

Advocacy Institute
The Advocacy Institute works to make social justice leadership strategic, effective, and sustainable in the pursuit of a just world.

Alliance for Children and Families
The mission of the Alliance for Children and Families is to strengthen the capacities of North America's child and family nonprofit service organizations and to advocate for children, families, and communities.

Alliance of Nonprofit Mailers
The Alliance of Nonprofit Mailers is a national coalition of nonprofit organizations interested in nonprofit postal policy that use the mail to raise funds, solicit members, and disseminate information.

American Association of Museums
The mission of the American Association of Museums (AAM) is to represent the museum community, address its needs, and enhance its ability to serve the public.

American Autoimmune Related Diseases Association (AARDA)
AARDA works to bring a national focus and collaborative effort to more than 80 autoimmune diseases and relieve their socioeconomic impact through education, awareness, and research support.

American Cancer Society
The American Cancer Society is the nationwide community-based voluntary health organization dedicated to eliminating cancer as a major health problem by preventing cancer, saving lives, and diminishing suffering from cancer through research, education, advocacy, and service.

American Diabetes Association
The American Diabetes Association is the nation's leading nonprofit health organization providing diabetes research, information and advocacy. The mission of the organization is to prevent and cure diabetes and to improve the lives of all people affected by diabetes.

American Foundation for AIDS Research (amfAR)
The American Foundation for AIDS Research (amfAR) is the nation's leading nonprofit organization dedicated to the support of HIV/AIDS research, AIDS prevention, treatment education, and the advocacy of sound AIDS-related public policy.

American Foundation for the Blind
The American Foundation for the Blind is a national charitable nonprofit whose mission is to eliminate the inequities faced by the ten million Americans who are blind or visually impaired through the critical issues of literacy, independent living, employment, and access through technology.

American Heart Association
The American Heart Association is a national voluntary health agency whose mission is to reduce disability and death from cardiovascular diseases and stroke.

American Lung Association
The American Lung Association is a national voluntary health agency whose mission is to prevent lung disease and promote lung health.

American Society of Association Executives
The mission of the American Society of Association Executives is to advance the value of associations to society and to support the professionalism of the individuals who lead them.

American Symphony Orchestra League
The American Symphony Orchestra League provides leadership and service to American orchestras while communicating to the public the value and importance of orchestras and the music they perform.

Americans for the Arts
Americans for the Arts is the nation's leading nonprofit organization for advancing the arts in America. It is dedicated to representing and serving local communities and creating opportunities for every American to participate in and appreciate all forms of art.

ANGELCARE
ANGELCARE's mission is to offer an opportunity for a partnership with caring people who become members of their "band of angels" to answer prayers of the world's children for food, clothing, schooling, and disaster relief.

The ASPIRA Association, Inc.
Established in 1961, the ASPIRA Association, Inc., is a national nonprofit organization whose primary mission is to

foster the socioeconomic development of the Latino community.

Association of Fundraising Professionals (AFP)
AFP, an association of professionals throughout the world, advances philanthropy by enabling people and organizations to practice effective and ethical fundraising.

The Catholic Charities of Santa Clara County, California
Catholic Charities strives to empower the working poor to move beyond basic survival living to a state of meaningful, quality living through economic, family, and emotional stability.

Center on Philanthropy
The mission of the Center on Philanthropy is to increase the understanding of philanthropy and improve its practice.

CIVICUS: World Alliance for Citizen Participation
CIVICUS is an international alliance dedicated to strengthening citizen action and civil society throughout the world.

Clean Water Action, Inc.
Clean Water Action is a nonprofit citizen's environmental organization with goals of clean, safe, and affordable water, prevention of health-threatening pollution, creation of environmentally safe jobs and businesses, and empowerment of people to make democracy work.

Colorado Association of Nonprofit Organizations
The mission of the Colorado Association of Nonprofit Organizations is to lead, serve, and strengthen Colorado's nonprofit organizations.

Community Anti-Drug Coalitions of America
CADCA's mission is to build and strengthen the capacity of community coalitions to create safe, healthy, and drug-free communities.

The Conference Board
The Conference Board is a global independent public-purpose membership organization that conducts research, brings executives together to learn from one another, convenes conferences, publishes information, and forecasts and assesses trends.

Cooperative for Assistance and Relief Everywhere, Inc. (CARE, Inc.)
The mission of CARE, Inc. is to provide international humanitarian relief and development in over 40 developing countries around the world.

Council for Advancement and Support of Education (CASE)
CASE is the leading resource for professional development, information, and standards in the fields of education fundraising, communications, and alumni relations.

Council for Opportunity in Education
The mission of the Council is to advance and defend the ideal of equal educational opportunity in postsecondary education. As such, the focus of the Council is assuring that the least advantaged segments of the American population have a realistic chance to enter and graduate from a postsecondary institution.

Easter Seals, Inc.
The mission of Easter Seals is to create solutions that change the lives of children and adults with disabilities or other special needs and their families.

Girls Incorporated
Girls Incorporated is a national nonprofit that inspires all girls to be strong, smart, and bold. Since 1945, Girls Incorporated has offered public education and programs that empower girls to understand and assert their rights.

HalfthePlanet Foundation
HalfthePlanet Foundation is a nonprofit organization that supports the application of technology to promote the values of the Americans with Disabilities Act (ADA)—independent living, social inclusion, equality of opportunity, economic self-sufficiency, and empowerment.

International Youth Foundation
The mission of the International Youth Foundation is to positively impact the greatest number of young people, in as many places as possible, in the shortest amount of time, with programs that are effective, and in ways that are sustainable.

Islamic Society of North America
The mission of the Islamic Society of North America is to provide a platform of expression for Islam, to develop educational outreach and social services that translate the teachings of Islam into everyday living, and to enhance Islamic identity in society.

KaBOOM! Inc.
It is KaBOOM!'s mission that every child, through the participation of their communities, should have healthy play opportunities. KaBOOM! leads safe and accessible community-building playground projects that are critical to the development of children.

Kidney Cancer Association
The Kidney Cancer Association is a membership organization made up of patients, family members, physicians, researchers, and other health professionals. Its mission is a world without kidney cancer.

The Learning Center
The Learning Center provides prevention and early intervention services for children from birth through 5 years of age and works in collaboration with both families and the community.

The Leukemia and Lymphoma Society
The Leukemia and Lymphoma Society is the world's largest voluntary health organization dedicated to funding blood cancer research, education and patient services. The Society's mission is to cure leukemia, lymphoma, Hodgkin's disease and myeloma, and to improve the quality of life of patients and their families.

Maryland Association of Nonprofit Organizations
The Maryland Association of Nonprofit Organizations works to strengthen and support the ability of nonprofit organizations to serve the community, and to enhance public understanding of, confidence in, and support for the nonprofit sector.

National Asian Pacific American Legal Consortium
The National Asian Pacific American Legal Consortium is a national nonprofit, nonpartisan organization whose mission is to advance the legal and civil rights of Asian Pacific Americans.

National Civic League (NCL)
The National Civic League (NCL) is a 107-year-old nonprofit, nonpartisan organization dedicated to strengthening citizen democracy by transforming democratic institutions. NCL accomplishes its mission through technical assistance, training, publishing, research, and the All-America City Awards, the nation's oldest and most prestigious community recognition program.

National Committee to Preserve Social Security and Medicare
The mission of the National Committee to Preserve Social Security and Medicare, a membership organization, is to protect, preserve, promote, and ensure the financial security, health, and well being of current and future generations of maturing Americans.

National FFA Foundation, Inc.
The National FFA Foundation, Inc., provides financial support for Future Farmers of America (FFA) programs. FFA makes a positive difference in the lives of students by developing their potential for premier leadership, personal growth, and career success through agriculture education.

National Health Council
The National Health Council advances patient care, medical research, health education, and community services nationwide through voluntary health agencies that serve people with chronic diseases and/or disabilities.

National Marfan Foundation
National Marfan Foundation is a volunteer health organization dedicated to saving lives and improving the quality of life for individuals affected by Marfan syndrome by providing education, awareness, research and support.

National Mental Health Association
The National Mental Health Association is dedicated to promoting mental health, preventing mental disorders, and achieving victory over mental illness through advocacy, education, research, and service.

National Multiple Sclerosis Society
The mission of the National Multiple Sclerosis Society is to end the devastating effects of MS. The Society and its network of chapters nationwide promote research, educate, advocate on critical issues, and organize a wide range of programs—including support for the newly diagnosed and those living with MS over time.

National Puerto Rican Forum
The National Puerto Rican Forum is a leadership organization working to enhance the socio-economic conditions of the Latino population and other underserved communities through information, advocacy, and direct services.

National Urban League
The mission of the Urban League movement is to enable African Americans to secure economic self-reliance, parity and power, and civil rights.

National Wildlife Federation
The mission of the National Wildlife Federation is to educate, inspire and assist individuals and organizations of diverse cultures to conserve wildlife and other natural resources and to protect the Earth's environment in order to achieve a peaceful, equitable and sustainable future.

NOW Legal Defense and Education Fund
NOW Legal Defense and Education Fund is a leading national nonprofit civil rights organization that for more than thirty years has used the power of the law to define and defend women's rights.

Pennsylvania Association of Nonprofit Organizations
PANO is the statewide membership organization serving and advancing the charitable nonprofit sector through leadership, advocacy, education, and services in order to improve the quality of life in Pennsylvania.

Points of Light Foundation
The mission of the Points of Light Foundation is to engage more people more effectively in volunteer service to help solve serious social problems.

Public Education Network
The mission of the Public Education Network is to build public demand and mobilize resources for quality public education for all children through a national constituency of local education funds and individuals.

South Carolina Association of Nonprofit Organizations
The mission of the South Carolina Association of Nonprofit Organizations is to improve charitable services to the citizens of South Carolina by strengthening the leadership and management capacities of nonprofit organizations. This is accomplished through advocacy, cost-saving programs, networking, information, resources, education, and training.

Theatre Communications Group
The Theatre Communications Group's mission is to strengthen, nurture, and promote the professional not-for-profit American theatre.

YMCA of the USA
The mission of the YMCA of the USA is to put Christian principles into practice through programs that build healthy spirit, mind, and body.